

STATE WATER RESOURCES CONTROL BOARD

ADMINISTRATIVE PROCEDURE MANUAL

ADMINISTRATIVE SERVICES

CHAPTER 4.4

STATE WATER POLLUTION CLEANUP AND ABATEMENT ACCOUNT

This chapter describes how Regional Water Quality Control Boards (Regional Water Boards), the State Water Resources Control Board (State Water Board), public agencies, specified tribal governments, and not-for-profit organizations that serve disadvantaged communities (as defined in Water Code section 79505.5), can access the Cleanup and Abatement Account for funding to clean up or abate a condition of waste affecting water quality.

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ATTACHMENTS

- [Attachment I](#) – Progress Report
- [Attachment II](#) – Request for Payment
- [Attachment III](#) – Time Extension Request
- [Attachment IV](#) – Final Report Outline

AUTHORITY

The Cleanup and Abatement Account (CAA or Account) was created by Water Code Sections 13440-13443. The Account is funded by monies: (a) appropriated by the Legislature; (b) contributed to the CAA by any person and accepted by the State Water Board; (c) collected as part of criminal penalties and all moneys collected civilly under proceedings brought pursuant to Division 7 of the California Water Code; and (d) recovered pursuant to Water Code section 13304. The State Water Board, the Regional Water Boards, public agencies, specified tribal governments, and not-for-profit organizations that serve disadvantaged communities (as defined) with the authority to clean up waste or abate the effects of a waste on waters of the state, may utilize the Account. "Waters of the state" includes both surface water and groundwater.

Generally, CAA funds are provided for the emergency cleanup or abatement of a condition of pollution where there are no viable responsible parties (RP) available to undertake the work. In certain cases, if a person is identified as an RP for the discharge of waste or threatened discharge of waste that results in expenditure of funds from the CAA, the State Water Board may seek to recover the funds from the discharger, along with supervisory costs, as specified in Water Code Section 13304 (c)(1).

The flowchart presented on the Financial Assistance Programs – Grants and Loans internet site shows the general process for applying and receiving funding through the CAA, as explained in this document:

http://www.waterboards.ca.gov/water_issues/programs/grants_loans/caa/docs/cleanup_and_abatement_flowchart_simple.pdf

ELIGIBLE APPLICANTS

The following entities may request CAA funds:

- The Regional Water Boards
- The State Water Board
- Public agencies authorized to clean up a waste or abate the effects of a waste on waters of the state
- Tribal governments that are on the California Tribal Consultation List maintained by the Native American Heritage Commission and are a disadvantaged community, as defined in Section 79505.5, that agree to waive tribal sovereign immunity for the explicit purpose of regulation by the State Board pursuant to Division 13442, with authority to clean up or abate the effects of a waste
- Not-for-profit organizations serving a disadvantaged community, as defined in Section 79505.5, with authority to clean up or abate the effects of a waste.

PROGRAM PREFERENCES

The Program Preferences are based upon goals in the State Water Board's Strategic Plan Update 2008-2012 and other statewide priorities for the State Water Board and Regional Water Boards. The Program Preferences are provided below, in order of priority:

1. Emergency Cleanup Projects – Public Safety. (Strategic Goals 1, 2, 3, and 4)
2. Projects that address Disadvantaged Communities Environmental Justice infrastructure needs. (Strategic Goal 6)
3. Cleanup and/or abatement of 2010-listed water bodies that will help to implement a Total Maximum Daily Load (TMDL). (Strategic Goal 1)

4. Cleanup and/or abatement of non-point source legacy pollutants (i.e. Stormwater) when the source(s) of the pollution have been mitigated. (Strategic Goals 1, 2, 3, and 4)
5. Cleanup and/or abatement of pollution in high-use groundwater basins. (Strategic Goal 2)*
6. Cleanup and/or abatement of contaminated site when the viable responsible party has not been identified. (Strategic Goals 1, 2, 3, and 4)*
7. Projects that promote habitat restoration through non-profit organizations that collaborate with the Regional Water Boards and encourage public outreach and education. (Strategic Goals 1, 2, 3, and 4)
8. Completion of a study/plan and/or monitoring addressing significant statewide water quality problems.

*This does not include sites that are contaminated by leaking petroleum underground storage tanks. In those cases, please refer to the Orphan Site Cleanup Fund's website for further information (http://www.waterboards.ca.gov/water_issues/programs/ustcf/oscf.shtml).

The Strategic Goals from the 2008-2012 Strategic Plan can be found at the State Board Internet Site:

http://www.swrcb.ca.gov/water_issues/hot_topics/strategic_plan/docs/final_draft_strategic_plan_update_090208.pdf

ACCOUNT LIMITATIONS

The use of the Account is limited to:

- Performing and/or contracting for services to clean up a waste, abate the effects of a waste, or taking other necessary remedial action.
- Remedying a significant unforeseen water pollution problem posing a threat to public health
- Paying the appropriate administrative, legal, technical, and oversight costs associated with a cleanup effort.
- Covering appropriate costs associated with administration of the Account.
- Covering appropriate costs associated with overseeing or tracking the implementation of a supplemental environmental project (SEP) required as a condition of an order imposing an ACL.

APPLICATIONS FOR CAA FUNDING

Requestors should first contact the Technical Review Staff to determine whether a project complies with the purposes stated in the Water Code

(http://www.waterboards.ca.gov/water_issues/programs/grants_loans/caa/).

The Regional Water Boards, the State Water Board Divisions, public agencies, tribal governments, and not-for-profit organizations requesting CAA funds, must complete the CAA Funding Request Form in the State Water Board's Financial Assistance Application Submittal Tool (FAAST) website (<https://faast.waterboards.ca.gov>).

Supporting documentation submitted with the request form shall include:

- Regional Water Board resolution supporting the project and identifying the project category for the program preferences
 - When time or other special circumstances do not allow for Board action, a letter from the Region's Executive Officer may be considered
- Detailed scope of work
- Detailed project budget**

**The amount requested should include any costs for project oversight.

REQUESTS UP TO \$250,000

On May 7, 2013, the State Water Board, in [Resolution No. 2013-0013](#), delegated to the Deputy Director of the Division of Financial Assistance (DFA), the authority to approve requests for CAA funds for all projects up to and including \$250,000. DFA's Deputy Director, in consultation with the Office of Chief Counsel (OCC), as appropriate, will review the request to determine if:

1. The project complies with Water Code Sections 13442 or 13443.
2. Sufficient funds are available.
3. It is appropriate to fund the project, given competing projects, and the priorities of the Regional Water Board and State Water Board.

The Deputy Director will approve or deny the request and notify the agency via email.

REQUESTS OVER \$250,000

DFA, in consultation with OCC, will review the request to identify/verify the program preference category(ies) for the project and to determine if:

1. The project complies with Water Code Sections 13442 and 13443.
2. Sufficient funds are available.
3. It is appropriate to fund the project, given competing projects, and the priorities of the Regional Water Board and State Water Board.

The Deputy Director or Assistant Deputy Director will make a recommendation to the State Water Board's Executive Director. The Executive Director may decide to take the project to the State Water Board for its consideration, or to reject the project. If the project is scheduled for State Water Board consideration, DFA staff will work with the agency contact person to prepare an agenda item for the proposal to be heard at an upcoming State Water Board meeting. The State Water Board, at a public meeting, will approve, deny, or modify the project proposal. The agency contact person will receive the determination via email or telephone. Copies of the resolutions are provided on the State Water Board's website approximately 30 days after adoption of the resolution.

EMERGENCY REQUESTS

The Regional Water Board Executive Officers (or their designees), public agencies, tribal governments, and not-for-profit organizations, may request funds verbally or via email for amounts of \$250,000 or less when there is an urgent need to clean up or abate a condition of pollution. These requests should be directed to DFA's Deputy Director, the Executive Director, or his or her designee(s).

Within one week following the approved oral request, the requesting agency should submit a completed CAA Funding Request Form to the State Water Board. California Public Contract Code section 1102 (<http://law.onecle.com/california/public-contract/1102.html>) defines

“emergency” as: “a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.”

CONSIDERATION OF CEQA REQUIREMENTS

All projects are required to comply with the California Environmental Quality Act (CEQA). Project implementation that could result in potentially significant environmental impacts (for example any ground-disturbing activities, such as construction) cannot begin until the State Water Board has reviewed the CEQA documentation submitted by the Grantee and made a determination on the type of environmental review that must occur prior to funding, to ensure State Water Board compliance with CEQA. If the work is conducted on federal land, the Grantee must also comply with the National Environmental Policy Act (NEPA).

MANAGEMENT OF THE ACCOUNT

Management of the CAA is the responsibility of the State Water Board's DFA.

DFA RESPONSIBILITIES:

- Process all requests for cleanup and abatement funds.
- Analyze all requests for eligibility and identify program preference category.
- Approve or deny requests up to and including \$250,000.
- Make recommendations on requests exceeding \$250,000 to the Executive Director for submission to the State Water Board for review and approval.
- Process funding agreements/contracts and amendments.
- Provide the Grant/Contract Managers support for project tracking via project support tools and training.
- Provide administrative assistance to applicants for use of the Account.
- Receive and review invoices for funded projects.
- Receive and review progress reports and final reports for funded projects.
- Regularly report to State Water Board management on status of the projects and the Account balance.
- Annually post SEP status to the State Water Board's website.
- Make recommendations for policies and procedures and update Administrative Procedure Manual as necessary.
- Maintain project files for audits.*

** Grant/Contract Managers must also maintain a project file for audits and track project expenditures and deliverables.*

REGIONAL WATER BOARD RESPONSIBILITIES:

- Determine funding needs, cost of project, and alternative fund sources.
- Submit request for CAA funds to DFA.
- Ensure that the funds are being used in accordance with Water Code Sections 13340-13443.
- Maintain a project tracking sheet and/or database.
- Ensure approved project funds are not over-expended.
- Prepare and submit the Request for Payment and the accompanying invoice to DFA.
- Submit CAA Progress Report ([Attachment I](#)) monthly, quarterly, or annually along with the CAA Request for Payment ([Attachment II](#)) to DFA for documenting progress of the project and use of funds.
- Submit a CAA Time Extension Request ([Attachment III](#)) to DFA to extend the project end date if additional time is needed for completion.

- Upon completion of the project, submit a Final Report ([Attachment IV](#)) to DFA describing the work accomplished.
- Notify DFA of any new SEPs with title and description.
- Submit annual status report of SEPs to DFA upon request.
- Maintain project files for audits. *

*Grant/Contract Managers must also maintain a project file for audits and track project expenditures and deliverables.

REGIONAL WATER BOARD RESPONSIBILITIES FOR REQUESTS FROM PUBLIC AGENCIES, TRIBAL GOVERNMENTS, AND NOT-FOR-PROFIT ORGANIZATIONS:

- Consider the request's priority and review the project's worthiness.
- Provide a recommendation to the DFA Assistant Deputy Director.
- Ensure that the funds are being used in accordance with Water Code Section 13442.

RESPONSIBILITIES OF PUBLIC AGENCY, TRIBAL GOVERNMENTS, NOT-FOR-PROFIT ORGANIZATIONS:

- Contact the appropriate Regional Water Board or DFA, as applicable, for an evaluation of the project's worthiness.
- Provide an application, including all required forms and supporting documentation, to the State Water Board to request CAA funds.
- If applicable, prepare a Resolution allowing your agency to enter into a Grant Agreement or Contract with the Regional Water Board or State Water Board. The DFA Program Analyst or Grant Manager will provide a sample resolution with the minimum information required.
- If applicable, a not-for-profit organization should submit documentation showing authorization to clean up or abate a waste and that it serves a disadvantaged community meeting the specifications defined in Water Code section 79505.5.
- If applicable, a tribal government should submit documentation showing it has waived its sovereign immunity for purposes of regulation by the State Water Board.
- Submit comments and/or edits to the draft agreement to the Grant Manager.
- As needed, participate in conference calls with the Grant Manager and Program Analyst to discuss the draft grant agreement.
- Provide quick resolution(s) to issues, questions, and necessary changes to the grant agreement.
- Return signed agreements and all required paperwork to DFA.
- Keep the project on task per negotiated timelines.
- Keep lines of communication open with the Grant Manager. Notify the Grant Manager of any expected delays or other issues with the project.
- Notify the Grant Manager immediately if any change from the approved scope of work and budget may be required. DFA must approve any change prior to the implementation of the revised scope of work and budget.
- Maintain a project tracking sheet and/or database.
- Ensure approved project funds are not over-expended.
- Prepare and submit invoices and required backup documentation to the Regional Water Board or DFA, as applicable.
- Submit Progress Reports ([Attachment I](#)) monthly or quarterly, along with invoices, to DFA for documenting progress of the project and use of funds.
- Upon completion of the project, submit a Final Report ([Attachment IV](#)) to DFA describing the work accomplished.

CAA MANAGEMENT SUPPORT SERVICES

The OCC and the DAS will assist DFA in managing the fund. OCC is responsible for inquiries regarding any legal question concerning the eligibility of a specific applicant, the eligibility of a specific project, or legal issues related to the use of the Account. DAS is responsible for the fiscal administration of the Account, including the payments to recipients. DAS will produce periodic reports showing the condition of the fund and all encumbrances. DAS shall also assume responsibility for preparation of any budgetary documents necessary to appropriately expend these funds.

GRANTS AND CONTRACTS

Often, questions arise as to whether awarded funds will be disbursed pursuant to a grant agreement or a contract. In the latter case, the recipient of CAA funding will need to follow all applicable state contracting rules. The following discussion outlines the primary considerations in determining which mechanism is appropriate for a given award.

GRANTS:

Typically, when CAA funds are awarded, the State Water Board is providing assistance to an eligible entity to address a water pollution issue and the primary benefit accrues to the recipient, or in the general form of improved water quality. Funds will typically be disbursed as a grant agreement if the benefit accrues to the recipient, or in the general form of improved water quality, and a contractor will not be providing a good, service or material benefit to the State Water Board or Regional Water Board. A copy of the grant template, with standard terms that the State Water Board includes in a CAA grant agreement, will be provided to the agency upon request.

CONTRACTS:

In some cases, CAA awards should be disbursed under a formal contract. Contracts may be required in circumstances where subcontracting work is anticipated (for example, a Regional Water Board will contract with a private consultant to complete work authorized by the award) or when the CAA award results in the State Water Board or Regional Water Boards receiving a direct good or service in return for a CAA award (for example, the state is to receive a report, data, or memorandum that will be relied on to perform its official duties).

Unless a specific exemption applies, these contracts are subject to competitive bidding requirements outlined in the Public Contracts Code and State Contracting Manual and are subject to Department of General Services review and approval. For additional information on grants and contracts and whether Department of General Services review is required for a specific award/project see State Contracting Manual (November 2012) section 4.06.

A. CONTRACT EXEMPTIONS:

Water Code Section 13304 allows Regional Water Boards to enter into both oral and written contracts. Section 13304 applies when a Regional Water Board has issued a cleanup and abatement order or if after reasonable effort, the Regional Water Board cannot identify the person responsible for the discharge of waste or the condition of pollution or nuisance, and remedial work is required to respond to the discharge of waste or threatened discharge.

Even if a contract is determined to be exempt pursuant to section 13304, whenever the Regional Water Board agrees to a contract, oral or written, the Regional Water Board must

document and submit its terms to DAS Contracts Office and forward a copy to DFA within one week of the effective date of the contract.

Contract documentation, at a minimum, must include:

- Contract Request Form and Attachment (hyperlinks)
 1. [Contract Request Form](#) and [Instructions](#)
 2. [Contract Request Form Attachment](#) and [Instructions](#)
- Scope of Work
- Budget
- Authorizing Regional Water Board Resolution, or a letter from the Executive Officer.

For additional contract information, additional resources are available:

Department of General Services Contract Manual, available at:
<http://www.ols.dgs.ca.gov/Contract%20Manual/default.htm>

State Administrative Manual, available at:
<http://sam.dgs.ca.gov/TOC.aspx>

INVOICING

When payment is requested:

For projects overseen by the Regional Water Board, an invoice and any supporting documentation must be sent to the responsible Regional Water Board. The Regional Water Board Grant/Contract Manager will review the documentation, complete the Request for Payment form ([Attachment II](#)), and submit the package to the designated CAA Analyst.

For projects overseen by State Water Board Divisions, an invoice and any supporting documentation must be sent to the responsible State Water Board Division. The Division's Grant/Contract Manager will review the documentation, complete the Request for Payment form ([Attachment II](#)), and submit the package to the designated CAA Analyst.

Once the invoice has been approved by the CAA Grant Manager, the invoice package is reviewed by the CAA Fiscal Unit Manager and sent to Accounting for payment.

DE-OBLIGATION OF COMMITMENTS

Any funds not expended by the project end date will be disencumbered by the State Water Board. The agency receiving funds has 90 days after the project end date to submit an invoice. DFA may grant a time extension ([Attachment III](#)) if no additional funding is required. If additional funding is required, the State Water Board or the DFA Deputy Director must give approval prior to costs being incurred. If the additional funding will cause the total project cost to exceed \$250,000, the request must go to the Board for approval. Disencumbered funds will be available for commitment to other CAA projects.

REQUESTS FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT OVERSIGHT FUNDING

The Regional Water Boards are eligible to receive oversight funding for overseeing and tracking the implementation of SEPs required as a condition of an order imposing an ACL.

Requests for oversight funding should be made in writing and include the following items as appropriate:

- Discharger name and address.
- Basis for imposing the ACL that led to the SEP request.
- Reason for requesting a SEP.
- Impact on the community or surrounding area if oversight funding is not approved from the CAA.
- The steps the discharger will take in carrying out the SEP.
- Substantiation of the agency's agreement to participate in the SEP.

All requests should be addressed to:

State Water Resources Control Board
Attention: CAA Fiscal Unit Manager
Division of Financial Assistance
1001 I Street, 17th Floor
Sacramento, CA 95814

DEADLINE FOR AGREEMENT SUBMITTAL

Upon approval of the project by either the Deputy Director of DFA, the Executive Director, or the State Water Board, the agency must submit a finalized draft of the contract or grant agreement to the CAA Fiscal Unit Manager, no later than 6 months from the date of the email or resolution notifying the agency of the approval. If the draft agreement is not received by the deadline, the funding will be withdrawn and the funds will revert to the Account.

PROJECT REPORTING

The agency or Regional Water Board shall submit progress reports to DFA documenting the progress of the project, efforts to recover costs (where appropriate), and projections for future expenditures ([Attachment I](#)). The progress reports should accompany each invoice and Request for Payment.

If DFA determines that funds are not being used for the purposes specified by the State Water Board, an invoice dispute will be issued and further disbursements may be stopped at any time.

The agency, Regional Water Board, or State Water Board Division, shall notify DFA upon project completion and submit a final report ([Attachment IV](#)).

This report must summarize the project's accomplishments and any efforts to recover CAA expenditures from the responsible party(-ies) (where appropriate), as well as indicate the total CAA money spent. DFA will review the report to verify that the project was completed as stated in the agreement or contract.

CAA MANAGEMENT REPORT

A status report on the CAA will be in the State Water Quality Control Fund Management Report prepared by the Accounting Office (DAS). This is an ongoing report, which identifies all outstanding accounts. It includes all relevant Account information outlined on the CAA statement. The report is provided to DFA. DFA and DAS must report to the Executive Office and Regional Water Board management on the status of projects and funding at least semi-annually.

RECOVERING COSTS

The State Water Board may pursue the recovery of expended CAA funds and supervisory costs from a responsible party pursuant to Water Code Section 13304(c)(1).

In addition, the State Water Board may administratively attach a lien to the affected property to recover costs spent responding to an unauthorized discharge of waste or condition of pollution or nuisance. (Water Code Section 13304 (c)(2).

(Note: Water Code section 13442 provides that a public agency is not liable for the repayment of CAA funds, but 13442 is not a defense against an action brought by a regional board pursuant to 13304 subdivision (b) to prevent substantial pollution, nuisance or injury to any waters of the state.)

MAINTAINING THE FUND BALANCE

DFA will not approve or recommend approval of projects that over-commit the CAA beyond a prudent reserve for a significant unforeseen emergency. To determine whether a project will over-commit the Account, DFA will consult with DAS to estimate the year-end uncommitted balance and deduct budget-year obligations effective July 1 of any given year.¹ The uncommitted balance in excess of that amount is considered available for projects.

¹ Annual July obligations include allocations for the site cleanup program (SCP), other agency appropriations, and CAA management.